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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 In Re:

4 CUSTOMS AND TAX ADMINISTRATION  
5 OF THE KINGDOM OF DENMARK (SKAT)  
6 TAX REFUND LITIGATION

18 MD 2865 (LAK)

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7 March 5, 2020  
8 2:30 a.m.

9 Before:

10 HON. LEWIS A. KAPLAN,

District Judge

11 APPEARANCES

12 HUGHES HUBBARD & REED LLP  
13 Attorneys for Plaintiff SKAT  
14 BY: MARC A. WEINSTEIN  
15 WILLIAM P. MAGUIRE  
16 NEIL J. OXFORD

17 CAPLIN & DRYSDALE, CHARTERED  
18 Attorneys for Bradley London Pension Plan Defendants  
19 BY: MARK D. ALLISON  
20 DAVID L. GOLDBERG

21 WILLIAMS & CONNOLLY LLP  
22 Attorneys for Defendant Sander Gerber Pension Plan  
23 BY: AMY McKINLAY

24 GUSRAE, KAPLAN, NUSBAUM, PLLC  
25 Attorneys for Goldstein Defendants  
BY: MARTIN H. KAPLAN  
KARI PARKS

KOSTELANETZ & FINK, LLP  
Attorneys for Defendants John Doscov, David Freelow,  
Sterling Alpha Plan and Delmar Plan  
BY: ERIC SMITH

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APPEARANCES (Continued)

JOHN M. HANAMIRIAN

Attorney for Defendants Acorn Summers, Gregory Summer,  
Acron Nowell and Shreepah Shah

SEWARD & KISSEL LLP

Attorneys for Tew Defendants

BY: THOMAS R. HOOPER

K&L GATES LLP

Attorneys for Defendants DW Construction, Inc. Retirement  
Plan

BY: JOHN C. BLESSINGTON

BRANDON DILLMAN

WILMER CUTLER PICKERING HALE AND DORR LLP

Attorneys for Defendants Batavia Capital Pension Plan,  
Richard Markowitz and Jocelyn Markowitz

BY: ALAN SCHOENFELD

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Attorneys for Defendants Elizabeth and John van  
Merkensteijn

BY: SHARON L. MCCARTHY

DEWEY PEGNO & KRAMARSKY LLP

Attorneys for Defendant Michael Ben-Jacob

BY: SEAN K. MULLEN

AKERMAN LLP

Attorneys for Third-Party Defendant ED&F Man Capital  
Markets Ltd.

BY: BRIAN S. FRASER

KRISTEN G. NIVEN

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1 (Case called)

2 THE DEPUTY CLERK: Counsel for Plaintiff SKAT, are you  
3 ready?

4 MR. WEINSTEIN: Yes.

5 Good afternoon, your Honor. Marc Weinstein, Bill  
6 Maguire, and Neil Oxford.

7 THE COURT: Good afternoon.

8 THE DEPUTY CLERK: Defendants Bradley London Pension  
9 Plan and Doston Bradley, are you ready?

10 MR. ALLISON: Yes.

11 Good afternoon, your Honor. Mark Allison, Caplin &  
12 Drysdale, on behalf of the Bradley London Plan and 110 others,  
13 as you know.

14 THE COURT: I'll say a collective good afternoon to  
15 all of the defendants.

16 MR. ALLISON: Thank you.

17 THE COURT: Keep going.

18 THE DEPUTY CLERK: Defendant Robert Klugman, are you  
19 ready?

20 MR. ALLISON: Mark Allison, on behalf of Mr. Klugman.

21 THE DEPUTY CLERK: Defendant Sander Gerber Pension  
22 Plan, are you ready?

23 MS. McKINLAY: Yes.

24 Good afternoon, your Honor. Amy McKinlay, from  
25 Williams & Connolly.

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1 THE DEPUTY CLERK: Defendant Goldstein Law Group  
2 401(k) Profit Sharing Plan and Sheldon Goldstein, are you  
3 ready?

4 MR. KAPLAN: Ready.

5 Good afternoon, your Honor. Martin Kaplan, Gusrae  
6 Kaplan & Nusbaum.

7 THE COURT: Good afternoon.

8 THE DEPUTY CLERK: Defendant John Doscas, and David  
9 Freelow, and Sterling Alpha Plan, and Delmar Plan, are you  
10 ready?

11 MR. SMITH: Yes.

12 Eric Smith, from Kostelanetz & Fink.

13 THE DEPUTY CLERK: Defendants Acorn, Gregory Summers,  
14 and Christopher Nowell, and Shreepah Shah, are you ready?

15 MR. HANAMIRIAN: Yes, ready.

16 John Hanamirian, Hanamirian Law Firm.

17 THE DEPUTY CLERK: Defendants DW Construction, Inc.  
18 Retirement Plan, are you ready?

19 MR. BLESSINGTON: We are.

20 Good afternoon, your Honor. John Blessington, for the  
21 Utah plans and the one Pennsylvania plan.

22 THE DEPUTY CLERK: Tew Defendants, are you ready?

23 MR. HOOPER: Yes.

24 Good afternoon, your Honor. Ross Hooper, from  
25 Seward & Kissel.

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1 THE DEPUTY CLERK: For Defendants Batavia Capital  
2 Pension Plan, Richard Markowitz, and Jocelyn Markowitz, are you  
3 ready?

4 MR. SCHOENFELD: Yes, your Honor.

5 Alan Schoenfeld and Allison Stoddart, from Wilmer  
6 Cutler.

7 THE DEPUTY CLERK: For Defendants Elizabeth  
8 van Merkenstein and John van Merkenstein, are you ready?

9 MS. MCCARTHY: Yes.

10 Good afternoon, your Honor, Sharon McCarthy from  
11 Kostelanetz & Fink.

12 THE DEPUTY CLERK: For Defendant Michael Ben-Jacob,  
13 are you ready?

14 MR. MULLEN: Yes.

15 Sean Mullen, from Dewey Pegno & Kramarsky.

16 THE DEPUTY CLERK: Third-party Defendant ED&F Man  
17 Capital Markets, are you ready?

18 MR. FRASER: We are ready.

19 Brian Fraser, from Akerman LLP.

20 THE DEPUTY CLERK: Thank you. Please be seated.

21 THE COURT: Well, I thank everybody for the report,  
22 which was quite informative. Everybody who knows me knows I'm  
23 not happy with this stretching out so long, but let's see what  
24 we can do. I have some questions about specific parts.

25 On the second page of the letter, there's reference to

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1 a letter rogatory concerning information from SEB. The letter  
2 says that it has been provided to the Danish Ministry of  
3 Justice and so forth. What's the timeline on that?

4 MR. WEINSTEIN: I do have an update on that, your  
5 Honor. It actually has now gone from the Ministry of Justice  
6 to the court in Denmark, and we understand the timeline should  
7 be pretty quick.

8 THE COURT: What's "pretty quick"?

9 MR. WEINSTEIN: I think it will be up to the court to  
10 ultimately decide a date to have the parties in for testimony,  
11 if the testimony is necessary, but I would expect by the end of  
12 April, we can wrap that whole issue up. It should not be a  
13 delay in the case.

14 THE COURT: Okay. Thank you.

15 And a similar question about what's going on in  
16 respect of the British Virgin Islands.

17 MR. WEINSTEIN: Yes. So, we are very close to  
18 submitting to your Honor a request, and the reason why that is  
19 taking some time is that we'd like it to be one request to each  
20 of those countries, but we learned, through various sources in  
21 discovery, additional entities for which we need information,  
22 and so it's not a short list of entities that we are seeking  
23 information on from those countries. And just to give your  
24 Honor some context, we're talking about these offshore entities  
25 that we understand were purported counterparties to trading

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1 under very many different names, and, as we believe, it turns  
2 out that they are sort of counterparties in name only, they're  
3 all within the same circle of family of friends participating  
4 in this, but we keep learning of new names, and we don't want  
5 to do repeated letters rogatory.

6 I don't think -- once we get that submitted -- we're  
7 seeking pretty limited amount of information about each  
8 entity -- I don't foresee it taking a very long time.

9 THE COURT: When do you expect to submit them to me?

10 MR. WEINSTEIN: Probably by the end of next week.

11 THE COURT: Okay. Thanks.

12 Now let's talk about the EDF issue.

13 Mr. Weinstein, I take it EDF asserts, more or less,  
14 that if this went on in conjunction, or in parallel, with the  
15 English discovery, it wouldn't affect the overall schedule  
16 you've proposed. Do you agree with that?

17 MR. WEINSTEIN: I don't agree with that. The reason  
18 being -- I understand their end date to be in October to  
19 produce documents. There's no, as far as I know, and certainly  
20 it hasn't been conveyed to us, that there's any commitment --  
21 even though they have interim dates, commitment by which to get  
22 any certain types or quantity of documents before that. If we  
23 waited till October --

24 THE COURT: You're going to get backloaded.

25 MR. WEINSTEIN: Very backloaded. It affects about 35

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1 cases here. So, we need to take depositions, and we plan to  
2 schedule those depositions, and many of them well before  
3 October.

4 What we have done -- I don't think we are close to a  
5 resolution on this -- is we understand if they've got a lot of  
6 volume, some things will take some time, but we've asked to  
7 prioritize certain things we think are critical to the case,  
8 some of which we don't really understand why they can't be  
9 produced today. My example of that, your Honor, is, as the  
10 pleadings have now informed the Court, in the U.K., in their  
11 particulars of defense, originally, ED&F Man's position was all  
12 the trading that happened through their entity was legitimate  
13 trading, it all happened. That changed a little bit in the  
14 beginning of their defense. They identified, in an Annex A, a  
15 few examples where, actually, the information was false, they  
16 admit, in which case, the particular plan at issue was not  
17 entitled to the refund, and SKAT should get it back. And then  
18 this past September, they amended again to add Annex C, which  
19 added many, many more of those claims, which they now  
20 acknowledge were false. And just from a dollar perspective or  
21 kroner perspective, as it may be, we're talking about a third  
22 of the kroner amount of money that SKAT paid out to plans that  
23 used ED&F. Since they, apparently, went through all of their  
24 materials to identify those which they now say are false and to  
25 commit that, in their view, the other two-thirds are accurate,



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1 that information should be ready, available to us. That was  
2 done in September. We're now at the end -- well, the beginning  
3 of March, and they're saying they still can't produce that for  
4 many, many months.

5 THE COURT: Can't or won't?

6 MR. WEINSTEIN: Well, I don't know, but certainly  
7 haven't yet and aren't committing to do it any time soon.

8 And at the very beginning, we'd just like an  
9 explanation of what happened, how do they now know that a third  
10 of the submissions, from a dollar perspective, are false? And  
11 why do they believe the other ones aren't?

12 THE COURT: Mr. Fraser?

13 MR. FRASER: Thank you, your Honor. May I approach  
14 the podium?

15 THE COURT: Yes, please.

16 MR. FRASER: If I can, let's put this in some  
17 perspective. If you give me a couple of minutes, I'd  
18 appreciate it.

19 The case in England between SKAT and ED&F has been  
20 going on for quite some time. ED&F's presence in this case is  
21 much more recent. The parties in England, SKAT and ED&F,  
22 negotiated for months over the discovery schedule to take place  
23 in that case. That schedule was agreed among 20 law firms  
24 involving all the other parties to the case and was so ordered  
25 by Judge Baker, the Commercial Court of London, England, and

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1 Wales. That is now proceeding apace, and pursuant to SKAT's  
2 request, my client is reviewing 4 million documents, using 149  
3 keywords. And they have devoted substantial resources to doing  
4 that and are on their way to do that.

5 What we have told Mr. Weinstein and Hughes Hubbard is  
6 that we would produce to them every document that we produced  
7 to SKAT in the United Kingdom at the same time that we produce  
8 it in the United Kingdom, but that we cannot do a special  
9 production just for them. And we suggested to them -- we met  
10 at my office --

11 THE COURT: You cannot because it would be a criminal  
12 offense under U.K. law or you can't do it because you fired all  
13 your people? What's the reason you can't do it?

14 MR. FRASER: The reason we can't do it was that we  
15 would interfere with the process in the U.K. and, therefore, be  
16 at risk of violating the order in the U.K.

17 THE COURT: How would it interfere with that process?

18 MR. FRASER: I'm sorry, your Honor?

19 THE COURT: How would it interfere with that process?

20 MR. FRASER: Because there is a limited number of  
21 resources who are devoted towards moving as quickly as possible  
22 going through the process laid out in the U.K., and if we  
23 divert those resources to doing something else, then the U.K.  
24 litigation is not going to be --

25 THE COURT: So this is a matter of a resource decision

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1 by your client, right?

2 MR. FRASER: It's a matter of resources -- yes,  
3 whether it's money, or employees, or lawyers, yes, it's a  
4 matter of resource.

5 THE COURT: Okay.

6 MR. FRASER: But we're not saying we're not going to  
7 give him anything. In fact, we've produced documents to Hughes  
8 Hubbard a couple of weeks ago and we produced more documents to  
9 them just the day before yesterday.

10 THE COURT: What you haven't done is answered  
11 Mr. Weinstein's question, which is: Here you've been going  
12 along amending your position in the British litigation and  
13 acknowledging that certain transactions involve false  
14 statements, or whatever precisely they involve, and you,  
15 therefore, must have gone through your records and whatever  
16 information is available to you, looked at them, made decisions  
17 about them, and made representations to the U.K. court.

18 Why can't you give SKAT the exact same materials upon  
19 which you base those decisions here now?

20 MR. FRASER: Mr. Weinstein makes an assumption that's  
21 incorrect. He assumes that we were looking at documents, hard  
22 copy documents or electronic documents, to do that analysis.  
23 We retained FTI Consulting, who did the analysis by reviewing a  
24 database called Shadow, which has electronic data in it, but  
25 does not have documents in it. So it does not contain

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1 documents the way Relativity or one of our discovery databases  
2 would have. So those documents need to be identified and found  
3 throughout the entire system at ED&F.

4 THE COURT: Had you, prior to now, explained to them  
5 that it was done by a review of this Shadow Database?

6 MR. FRASER: The conversation never got that far. We  
7 had a conversation with them in January. I thought it went  
8 pretty well, and, apparently, it didn't from their perspective,  
9 and then I got a letter from them demanding all these things,  
10 which we haven't had a chance to address with them.

11 THE COURT: When did you get the letter?

12 MR. FRASER: The day before -- we got a letter from  
13 them two weeks ago, with which we responded by producing  
14 documents, and then we had another letter Wednesday, I believe.

15 THE COURT: I think you need to have another  
16 conversation with your client about resources.

17 MR. FRASER: Your Honor, if I could suggest: A lot of  
18 this could be resolved if Hughes Hubbard & Reed would  
19 coordinate with SKAT's counsel, Pinsent Masons, in the U.K. and  
20 the four law firms, two U.K. law firms and two U.S. law firms,  
21 could coordinate on what order this is going to be done in.  
22 We'd be more than happy to work --

23 THE COURT: Your presupposition in making that  
24 suggestion, which may be a good idea, for other reasons, is  
25 that the schedule is going to be the same in both countries.

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1 And I don't accept that. So you better get used to it.

2 MR. FRASER: Your Honor, the documents that they're  
3 asking for are going to take time to find. They have to be  
4 identified, they have to be found, they've got to be reviewed,  
5 and they've got to be produced. It is not going to happen  
6 overnight. We're moving as fast as we possibly can, but I  
7 can't put certain documents in front of the line of others  
8 because they're doing keyword searches, and they've got to  
9 search through each keyword, review those documents, and go on  
10 to the next keyword.

11 Mr. Weinstein?

12 MR. WEINSTEIN: Your Honor, I'm not going -- I don't  
13 think it's worth the Court's time quibbling about the dates  
14 that we've asked for things. I think we've dealt with a lot of  
15 defense counsel here. You're not hearing any other disputes on  
16 discovery. There's compromises that have been made,  
17 meet-and-confers, and we've all agreed to get to places where  
18 we need to be.

19 Unlike here, in the U.K., there's not going to be  
20 depositions. We need to take depositions. We tried to put  
21 forward to your Honor a realistic time frame. I understand the  
22 Court would probably like things to go quicker, but they  
23 certainly can't go quicker if we don't get the production.

24 For starters, there has to be -- this is a U.K.  
25 regulated entity, an FCA regulated entity, that many, many

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1 months ago came to a conclusion, based on -- they had FTI, a  
2 big vendor, do a big investigation for every claim in this case  
3 and, presumably, reach conclusions sufficient enough for them  
4 to state under oath in court that a third of the submissions  
5 were false. It cannot be that the only information about how  
6 they got there is in a database, that there's been nothing  
7 extracted, no reports given to the regulator about what  
8 happened, any kind of narrative description that explains --

9 THE COURT: Where is this database? I realize that's  
10 a funny question in the electronic era, but indulge me.

11 MR. FRASER: It's in the U.K.

12 THE COURT: Who does it belong to?

13 MR. FRASER: I assume it belongs to ED&F, but I don't  
14 know that.

15 Your Honor, we're asking for one thing. We're asking  
16 that SKAT, with both its counsel, the U.K. counsel and U.S.  
17 counsel, engage with us in this discussion rather than  
18 involving all these good people.

19 THE COURT: Look, I don't hear any unwillingness to  
20 engage. To the extent I see any unwillingness, I suspect it  
21 may be on the other side. What I gathered from this letter was  
22 that your position was we are not doing any document production  
23 in the U.S. except on the U.K. schedule, take it or leave it.  
24 That's what I got from it. And I gave you a chance to address  
25 Mr. Weinstein's point, and you've, more or less, confirmed that

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1 impression.

2 MR. FRASER: Your Honor, we are willing to engage with  
3 them, but it's got to be in coordination with what's happening  
4 in the U.K. We can't be doing one thing in the U.K. and  
5 something else here.

6 THE COURT: I'm sorry, you can, and you may have to.

7 MR. FRASER: May we brief it, your Honor?

8 THE COURT: What are you going to brief?

9 MR. FRASER: I would like to explain in more detail  
10 what is involved with the document review in the U.K., the  
11 schedule in the U.K., other parties in the U.K.

12 THE COURT: Nobody is questioning the schedule in the  
13 U.K.

14 Is anyone questioning what the schedule in the U.K.  
15 is?

16 Are you disputing what Mr. Weinstein's letter said  
17 that schedule was?

18 MR. FRASER: No, your Honor.

19 THE COURT: Do I need a brief to know what that  
20 schedule is?

21 MR. FRASER: I may not be explaining exactly why this  
22 is so difficult. It may include more technical issues than I  
23 have access to. All I'm saying is that we have great  
24 difficulty in doing this at this time, and I would like to be  
25 able to discuss it with them and their U.K. counsel. It's hard

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1 to see why that's so problematic for them.

2 THE COURT: I don't know that it's problematic for  
3 them. Is that problematic for you?

4 MR. WEINSTEIN: No. And we proposed certain things.  
5 The problem with the U.K. schedule, it has zero milestones, it  
6 just has dates, by which two scraps of paper may be produced in  
7 May, and two more in July, and then in October, there's going  
8 to be a big dump -- I expect that's what's going to happen --  
9 and we're going to be way behind schedule here.

10 MR. FRASER: If we have a conference with U.K. counsel  
11 and Hughes Hubbard, and they agree what process we should  
12 follow, so we're not at risk of falling behind on our  
13 obligations in the U.K. while we're meeting his obligations  
14 here, if they agree what they want us to do, we'll do that.

15 THE COURT: Look, I really don't care who meets with  
16 whom. And I take it, from what Mr. Weinstein just said, he  
17 doesn't care either. You want to get the U.K. lawyers  
18 involved? Nobody's standing in your way. Nobody.

19 But the assumption that whatever is going to happen in  
20 the U.K. is what's going to happen in my court is not an  
21 assumption I start with and may not be the one I end with.

22 MR. FRASER: Yes, your Honor.

23 THE COURT: So I will give you ten days to have  
24 whatever meetings you want, and then you can make whatever  
25 submissions you want about this issue by March 16th.



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1 MR. FRASER: Thank you, your Honor.

2 THE COURT: Except that you aren't going to -- either  
3 side -- dump on me. The submissions are going to be ten  
4 double-spaced pages or less, both of them.

5 MR. FRASER: Understood.

6 THE COURT: Okay.

7 I'm reasonably familiar with English practice, and  
8 it's a different kettle of fish in important respects from  
9 ours, and their needs are different than ours. It's that  
10 simple.

11 Thank you, Mr. Fraser.

12 MR. FRASER: Thank you.

13 THE COURT: Now, then, in the trial section here,  
14 Mr. Weinstein, you propose three groups. Give me an idea,  
15 would you please, as to what you estimated the length of each  
16 of the trials in each of those three groups, if I were to  
17 accept that proposal, would be.

18 MR. WEINSTEIN: Sure, your Honor.

19 The first group is the largest in terms of cases.

20 THE COURT: How many cases?

21 MR. WEINSTEIN: I believe it's exactly a hundred, but  
22 in or around a hundred. Once I get past ten, my counting is  
23 usually not so great. So it's, I believe, a hundred cases, but  
24 it's not a hundred individuals. It's a much narrower group of  
25 individuals; it's just people who are involved in many, many,

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1 many plans. If the case were to start today as it stands now,  
2 with those involved in it, it may take up to five weeks, but my  
3 expectation is that by the time we get to trial, things will  
4 shake out, and it will be a smaller group that are left. We'd  
5 hope to winnow that case down to closer to three weeks.

6 THE COURT: How about group two?

7 MR. WEINSTEIN: Group two is -- give me one second.  
8 It is, I think, exactly 50 cases.

9 THE COURT: And the trial estimate?

10 MR. WEINSTEIN: And the trial estimate? I'd say three  
11 to four weeks.

12 THE COURT: And group three?

13 MR. WEINSTEIN: So group three in a slightly different  
14 position. It's a smaller number of cases. It's, I believe, 34  
15 cases. The issue there is, in that group, many of the cases  
16 are not Southern District-filed cases, and so once we get to  
17 trial, we're talking about 5 of those cases are ones originally  
18 filed in this court, 29 of them were filed elsewhere. So,  
19 unless there's an agreement to have those --

20 THE COURT: Transferred.

21 MR. WEINSTEIN: -- tried here, we're only talking  
22 about five cases, and that group involves the ED&F Man group of  
23 cases. With that small of a group, two to three weeks.

24 I should say, just for your Honor's sake, in group  
25 one, where I said it was a hundred cases, it's 44 cases filed

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1 in this court, 56 filed in other courts. There are a lot of  
2 defendants who are the same, so if they're going to be doing a  
3 case here, they may want to just have them all joined here,  
4 but, obviously, I can't speak for that.

5 In group two, all of the cases were filed in this  
6 court, all 50. And I think I gave you the split on group  
7 three.

8 THE COURT: If we were to try the EDF cases, the five  
9 Southern District of New York cases, how long a trial is that?  
10 You say two to three weeks?

11 MR. WEINSTEIN: The reason I say that -- that's  
12 probably the one I have the least ability to give an estimate  
13 on because we don't really have a lot of what we need, which is  
14 part of the discussion we just had, with ED&F. So it's a  
15 little difficult to estimate, but it's not that many plans,  
16 it's only five, and so I think two to three weeks is a fair  
17 estimate.

18 THE COURT: Are these cookie cutter cases, basically,  
19 within each group?

20 MR. WEINSTEIN: I think for the first two groups, yes,  
21 they're all -- and the reason we grouped them is they are  
22 essentially the same fact pattern, with the same players, just  
23 repeated over and over, which is why we think, rather than  
24 picking a test case and actually doing them all together, you  
25 get the economies of scale, and a lot of it will be explaining

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1 a few of them, and then doing things in chart form to just show  
2 how many times it happened and giving the details.

3 So, I think with the third group, there are some  
4 disparate sort of subgroups within it. We just put them all  
5 together because they each used ED&F, so it will be a somewhat  
6 familiar fact pattern, but there may be a little more nuance as  
7 between sort of subgroups within that group three.

8 THE COURT: So what's the nub of those cases? What's  
9 the nub issue?

10 MR. WEINSTEIN: So I'd say group one is --

11 THE COURT: I'm talking about group three.

12 MR. WEINSTEIN: Okay. We're kind of early, still, in  
13 getting some information about those groups, but there's a  
14 group from Utah -- the Utah plans, as you've heard them --  
15 there's a group from Kentucky. These groups may not overlap,  
16 but they all had ED&F Man as their custodian. We've heard now,  
17 as it was our expectation, that many of the submissions were  
18 false. We'd like to hear what the explanation is from ED&F Man  
19 as to how that happened. We haven't gotten that yet. But our  
20 expectation still is that these plans did not each own the  
21 hundreds of millions and more much kroner worth of stock and  
22 actually received the dividends, but I think it's just a  
23 different group than the first two because it's a different  
24 custodian. The first two are mostly related to the Sanjay Shah  
25 individual, who some parties have raised. ED&F group is

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1 different than that.

2 THE COURT: There's not a Sanjay Shah --

3 MR. WEINSTEIN: There's not. I think there's a few  
4 plans within that group that originally started with Shah and  
5 then switched over to ED&F Man, but, for the most part, it's  
6 not Sanjay Shah related. So there will be some different  
7 patterns there.

8 THE COURT: Any other enlightenment you have for me?

9 MR. WEINSTEIN: The only other thing I want to raise,  
10 it's in the proposed schedule about amended pleadings, and we  
11 do expect to amend. And the one thing I just wanted to raise  
12 with your Honor is whether we need to file a motion with the  
13 Court to do that. This would be the first time we'd be  
14 amending. If we could --

15 THE COURT: Well, I think Rule 15 says you don't  
16 unless an answer has been filed, right?

17 MR. WEINSTEIN: Well, I think at this point --

18 THE COURT: It's a long time since I looked at that.

19 MR. WEINSTEIN: I think you're right, but answers have  
20 been filed, and we're beyond the 21 days of that.

21 THE COURT: Well, it all depends whether they're  
22 prepared to stipulate to it, to the filing, right? If you have  
23 to file a motion, you have to file a motion.

24 MR. WEINSTEIN: Okay. We'll work with defense counsel  
25 on that.

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1 THE COURT: I mean, you might be in a position where  
2 you could file one motion that would cover the whole  
3 waterfront.

4 MR. WEINSTEIN: We would definitely do that, yes.

5 THE COURT: Okay. All right.

6 Defendants.

7 MR. ALLISON: Your Honor, should I --

8 THE COURT: Please.

9 MR. ALLISON: Your Honor, a few particular items to  
10 address.

11 You were discussing previously the database that ED&F  
12 Man was using. I did want to alert the Court to an issue  
13 regarding a database that we are using here in the U.S. Caplin  
14 & Drysdale, on behalf of our defense group, established a  
15 database through Epic, which hosts the Relativity database  
16 system, in order to gather and produce documents to SKAT and  
17 Hughes Hubbard. Likewise, we used that database system to host  
18 documents that are received by SKAT in response to our  
19 discovery requests, and we give access to that portion of the  
20 database to all defendants in order to share and streamline the  
21 process. The company that hosts Relativity, Epic, announced on  
22 Monday, I believe it was, your Honor, that they were the victim  
23 of a cybersecurity ransomware attack, and, as a result, they  
24 have shut down their entire system worldwide to all customers,  
25 which obviously includes all of the users through Caplin &

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1 Drysdale.

2 We are getting daily updates about this from Epic,  
3 they're issuing public press releases about it, but have  
4 indicated no particular timetable --

5 THE COURT: Is this the same one who has all the  
6 hospital systems?

7 MR. ALLISON: I don't know, your Honor, but my  
8 understanding is that it's basically frozen everybody worldwide  
9 that's ever used the system. That obviously precludes our  
10 ability to access the system for purposes of discovery and  
11 preparation of depositions and whatnot. It's a day-to-day  
12 thing, but, at the moment, there's no timetable for it being  
13 lifted or unfrozen. At the moment, I don't think it's an issue  
14 as in this week, but we do have depositions that are coming up  
15 later this month, and we are obviously going to be a little  
16 worried if we're not able to prepare because we don't have  
17 access to our own system.

18 THE COURT: Real trial lawyers.

19 MR. ALLISON: The good old days of hard copy documents  
20 are maybe slightly behind us, your Honor. We only want to make  
21 the Court aware of it in the event that it becomes a problem.  
22 Hopefully, this all gets resolved in due course, but I've  
23 alerted Mr. Weinstein to this today, and we'll continue to work  
24 with Hughes Hubbard to find a remedy if we get to that point.

25 THE COURT: Okay.

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1 MR. ALLISON: Secondly, the status report talks about  
2 the discovery productions by all the parties, of course, and I  
3 think, in general, the parties, the defendants and plaintiff,  
4 have been cooperative and have been working together through  
5 various meet-and-confers to make sure that we are addressing  
6 each other's discovery issues and disputes. Nothing major, no  
7 crisis yet, but I do want to just alert the Court that  
8 plaintiff, at the moment, has taken the position that there are  
9 certain documents that defendants have requested that are  
10 off-limits to defendants. Very broadly speaking, your Honor,  
11 these include documents that involve eternal SKAT  
12 communications, communications between SKAT and other  
13 government agencies both in Denmark and outside of Denmark, as  
14 well as, again, broadly speaking, pleadings and other filings  
15 in other courts outside the United States that may refer to  
16 statements being made by SKAT in that litigation or other  
17 parties in those litigations.

18 The defendants are concerned about not having access  
19 to that information because we believe it may establish  
20 potential defenses, both in terms of, of course, when SKAT  
21 became aware of certain potential allegations that may  
22 establish potential statute of limitations defenses, as well as  
23 information that may indicate who SKAT believes are the actual  
24 true owners of the stock that is in dispute, that produced the  
25 dividends that are in dispute. We're obviously still in the



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1 middle of meet-and-confers. We're not asking the Court for  
2 anything at this point. I'm just noting that while we've been  
3 cooperative in both directions, we have issues in both  
4 directions. This is going to become an issue if it's not  
5 resolved. I just want to make the Court certainly aware of it.

6 THE COURT: Okay.

7 MR. ALLISON: Third, although I think the Court has  
8 probably sort of realized this from the discussion today and  
9 from the status report, we have sort of three different  
10 tranches of activities occurring here because there's sort of  
11 three tranches of defendants, if you will. There's the  
12 original defendants, those brought in last year, and then the  
13 cross-claims with ED&F Man. As a result, we're doing our best  
14 to coordinate. I don't think it's been an issue, but one of  
15 the things that will come up is that the new defendants, or the  
16 newer defendants coming in, will want likely to increase the  
17 number of discovery requests that they have not had an  
18 opportunity to take advantage of from the original requests  
19 that were agreed to with the Court. That has not yet been  
20 addressed, but will need to be addressed at some point.

21 Lastly, I note this, only because the Court asked  
22 about it in the order requesting the status report regarding  
23 settlement discussions, and as Mr. Weinstein indicated in the  
24 report that we signed off on, Hughes Hubbard has made clear  
25 that the door is open for those conversations. I've been asked

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1 to note to the Court that there are some potential very, very,  
2 very high-level constructs for discussions in Denmark between  
3 SKAT and some Danish counsel in Denmark. We don't know where  
4 that's going or whether and how that would apply to the  
5 proceedings here, but we wanted to make the Court aware of that  
6 in the event that it becomes more grounded and it leads to  
7 further developments.

8 THE COURT: Okay. Thank you.

9 MR. ALLISON: That's all, your Honor.

10 THE COURT: Okay.

11 Anyone else?

12 All right. Well, I appreciate the thorough updating.  
13 I hope that Mr. Allison and Mr. Weinstein can resolve their  
14 issues. I'd rather not have to resolve the issues. And, in my  
15 experience, you're probably both well advised not to want me to  
16 resolve them.

17 Okay. Thank you. If this Epic problem isn't resolved  
18 in the next two weeks, please let me know that.

19 MR. ALLISON: Yes, your Honor, will do.

20 THE COURT: Okay. Thank you.

21 \* \* \*